

**DRAFT**  
**PRESERVATION RESTRICTION AGREEMENT**

**SOCIETY FOR  
THE PRESERVATION OF NEW ENGLAND ANTIQUITIES**

The Parties to this Preservation Restriction Agreement (this "Agreement") are the **SOCIETY FOR THE PRESERVATION OF NEW ENGLAND ANTIQUITIES, D.B.A. HISTORIC NEW ENGLAND**, a Massachusetts charitable corporation having an address at Harrison Gray Otis House, 141 Cambridge Street, Boston, Massachusetts 02114-2702, (hereafter "Grantee") and the **TOWN OF WILMINGTON**, having an address at 121 Glen Road, Wilmington, Massachusetts 01887-3500 (herein together with their heirs, successors, administrators and assigns called "Grantor").

**RECITALS**

Grantor is the owner in fee simple of certain property known as the Butters-Avery House, located at 165 Chestnut Street, Wilmington, Massachusetts, which includes certain premises consisting of approximately .56 acres of land, being more particularly described in Exhibit A attached hereto and in that certain deed (the "Deed"), recorded with the Middlesex North Registry of deeds (the "Registry") in Book 20621, Page 233 together with all improvements thereon (the "Premises"). The Premises are also shown in the photographs and diagrams attached as Exhibits B, C and D hereto. The building protected by this Agreement consists of Butters-Avery House (the "Butters-Avery House") as labeled and more particularly shown in Exhibits B, C and D.

Grantee is a charitable corporation created in 1910 and exempt from income taxation under Section 501(c)(3) of the Internal Revenue Code. By its Articles of Organization and By-Laws, Grantee is authorized to create, impose, accept and enforce preservation restrictions to protect sites and structures historically significant for their architecture, archaeology or other associations.

The Butters-Avery House is historically significant and worthy of preservation. The house was traditionally dated to 1682-1687 until architectural investigation in 2006 of surviving building fabric revealed that the house was likely constructed circa 1720 for William Butter II and his wife, Rebeckah using re-used framing members from the circa 1665 home of William's father, William Butters I. Upon William Butters II death in 1745, the house was inherited by his son, William Butters III, who transferred it to his son, William Butters IV in 1774. William Butters IV sold the house to his son, Abiel Butters in 1821. Abiel Butters sold the house out of the family in 1839 to Jacob and Caleb Corey. After 1839 the house has a series of owners until it was purchased in 1846 by Alexander Avery. At the end of the nineteenth century and through

Grantor: Town of Wilmington

Grantee: Society for the Preservation of New England Antiquities

Address of property: 165 Chestnut Street, Wilmington, Massachusetts 01887-3500

Title Reference:

the early twentieth century the house had a series of owners until it was purchased by Albert G. Snowman in 1907. The Snowman family maintained ownership until 1962 when it was sold to Minnie Sachse and then purchased that same year by Paul and Velma Emery who owned the property until 1995. The history of the Butters-Avery House is directly related to the Baldwin Apple when in 1789 William Butters IV transplanted a graft of the original apple tree grown at the nearby farm of his cousin, James Butters, behind the Butters-Avery House. William Butters IV's tree was discovered by surveyors on the Middlesex Canal in 1793 and promoted by Col. Loammi Baldwin as the Baldwin Apple. In recognition of these qualities, the Butters-Avery House was individually listed on the National Register of Historic Places in 2010.

The Butters-Avery House is comprised of a two-and-one-half-story, three-bay, south facing main block (the "Main Block"), and a one-and-one-half-story ell (the "West Ell") attached to the west elevation of the Main Block. The open space of the Premises consists of an open lawn, providing a natural setting that complements the historic structure on the Premises, thereby endowing the Butters-Avery House with scenic, natural and aesthetic value and significance.

Massachusetts General Laws, Chapter 184, Sections 31-33, authorizes the creation and enforcement of preservation restrictions appropriate to the preservation of a site or structure for its historical significance and for its natural, scenic and open condition.

Grantor and Grantee recognize the historic, architectural, cultural, scenic and aesthetic value and significance of the Premises, and have the common purpose of conserving and preserving the aforesaid value and significance of the Premises. To that end, Grantor desires to grant to Grantee, and Grantee desires to accept, the Preservation Restrictions set forth in this Agreement, pursuant to Massachusetts General Laws, Chapter 184, Sections 31-33.

NOW, THEREFORE, in consideration of One Dollar (\$1.00), receipt and sufficiency of which are hereby acknowledged, Grantor does hereby grant, release and convey to Grantee, its successors and assigns this Preservation Restriction Agreement in perpetuity, in and to the Premises, as follows.

**1. RECITALS, DEFINITIONS AND EXHIBITS.**

**1.1 Recitals.** The parties acknowledge that the recitals set forth above are true and correct and are hereby made a part of this Agreement.

**1.2 Definitions.**

**1.2.1 "Addition."** "Addition" shall mean and include all construction attached to the Butters-Avery House in any way, and any subsequent construction that attaches to any such addition, including, without limitation, a deck, porch, ramp, stair or landing.

**1.2.2 "Structure."** "Structure" shall mean any combination of materials assembled at a fixed location to give support or shelter, including, without

limitation, a building, deck, ramp, arbor, trellis, sign, paving, fencing, walls, game courts, swimming pools and poles (utility and otherwise).

**1.2.3 "Facade(s) and Elevation(s)."** "Facade(s) and elevation(s)" shall include, without limitation, all exterior doors, door frames, windows, window sash, window frames, transoms, sidelights, hardware, wall sheathing, clapboards, siding boards, porches, panels, cornices, moldings and other decorative elements and all other elements, whether decorative or structural, which support any of the foregoing. For convenience of reference, the front elevation of the Butters-Avery House shall be called the south facade, the rear elevation of the Butters-Avery House shall be called the north elevation, and the other elevations of the Butters-Avery House shall be called the east and west elevations, based upon such elevation's orientation relative to the south facade.

**1.2.4 "Protected Features."** "Protected Features" shall mean those historical, architectural and landscape features protected pursuant to Sections 2 and 3 of this Agreement.

**1.3 Exhibits.**

**1.3.1 Plans.** Plans entitled "Floor Plan" and "Site Plan" are attached as Exhibit C and D respectively and incorporated herein by this reference.

**1.3.2 Documentary Photographs.** In order to establish with more certainty the condition of the building and the character of the Protected Features as of the date hereof, attached hereto as Exhibit B and incorporated herein by this reference are copies of twenty (XX) exterior photographs taken by J. David Bohl on XXXX, and thirty-two (XX) interior photographs taken by J. David Bohl on XXXX, together with an affidavit specifying certain technical and locational information with respect to such photographs. It is stipulated between Grantor and Grantee that such copies accurately represent the external and internal condition of the Butters-Avery House and the Premises and the character of the Protected Features on the date hereof and as of the date this Agreement is first recorded with the Registry.

**2. EXTERIOR RESTRICTIONS.** Grantor agrees that, without the prior written approval of Grantee, no activity shall be undertaken which Grantee determines will alter or adversely affect the appearance, materials, workmanship or structural stability of the following exterior portions of the Butters-Avery House, or following site features as they exist as of the date of this Agreement, documented in the photographs attached hereto as part of Exhibit B:

**2.1** all facades and elevations (Exhibit B);

- 2.2 the massing, profile and materials of the roofs; the addition of skylights and additional dormers being expressly forbidden at the south roof slopes of the Main Block and West Ell (Exhibit B);
- 2.3 the chimney in its entirety (Exhibit B); and
- 2.4 all foundations (Exhibit B).

3. **INTERIOR RESTRICTIONS.** Grantor agrees that, without the prior written approval of Grantee, no activity shall be undertaken which Grantee determines will alter or adversely affect the appearance, materials, workmanship or structural stability of the following interior portions of the Butters-Avery House as they exist as of the date of this Agreement, documented in the photographs attached hereto as part of Exhibit B:

Main Block and West Ell:

- 3.1 all structural members and framing, including but not limited to, interior beams, posts, girts, plates, studs, sheathing boards, rafters, purlins, masonry walls and masonry piers (Exhibit B);

Main Block:

- 3.2 space configuration and door locations of all rooms, closets, halls and stairhalls at the first story and second story south stairhall (Exhibit B);
  - 3.3 existing woodwork of all rooms, closets, halls and stairhalls at the first story and second story south stairhall, including but not limited to cornices, mantelpieces, paneling, wainscoting, baseboards, door stops, stairs, railings, balusters, newels, doors, door casings, windows, window sash, window casing and other decorative elements (Exhibit B);
  - 3.4 existing door hardware in the following locations: (i) the closet door at the Parlor, (ii) the cupboard between the Parlor and Leanto Kitchen, (iii) the cellar door at the Leanto Kitchen, (iv) the door between the Ell and the Leanto Kitchen, (v) the Northeast Chamber entry door, (vi) the Parlor Chamber entry door (Exhibit B); and
  - 3.5 all fireplaces and hearths in their entirety, including any attached iron or brass hardware, whether decorative or functional (Exhibit B).
4. **REVERSIBLE ALTERATIONS.** Grantee shall approve the activities identified below, except as noted below, provided that Grantee first determines that the proposed activity will not alter or adversely affect any Protected Features:

- 4.1 installation of wood shingle, or sblack or charcoal asphalt shingle roof coverings;
- 4.2 installation of screens, storm windows, storm doors or window-mounted air-conditioning units;
- 4.3 installation of fiberglass batt insulation at the Butters-Avery's House's exterior walls with coinciding installation of a vapor barrier and air-sealing measures, and installation of insulation at the Butters-Avery House's attic floors or cellar, provided that no spray foam insulation shall be introduced to any areas of the building;
- 4.4 electrical re-wiring, provided that no electrical fixtures are in any manner imbedded in or attached to protected woodwork and structural members and other framing are not cut or otherwise altered without the prior approval of Grantee;
- 4.5 replacement of existing plumbing lines and plumbing fixtures provided that protected woodwork and structural members and other framing are not cut or otherwise altered without prior approval of Grantee;
- 4.6 interior and exterior painting or paint removal, provided that the material(s) and method(s) to be used to remove paint shall not damage the underlying substrate;
- 4.7 rebuilding of the Main Block's chimney from the attic floor through the roof provided that intact brick be salvaged and re-used, new brick matches the size and color of the existing brick, a soft, lime mortar be used that matches the color, texture and tooling of the existing mortar, and that Grantee confirms the rebuilt chimney will match the brick pattern, coursing, dimensions and design of the existing chimney prior to the commencement of any work; and
- 4.8 replacement of broken window glass.

**5. USE, MAINTENANCE AND OTHER ACTIVITIES.**

- 5.1 **Additions.** No additions to the Butters-Avery House shall be erected hereafter without prior written approval of Grantee.
- 5.2 **Additional Structures.** No structure not on the Premises as of the date of this Agreement shall be erected or placed on the Premises hereafter without prior written approval of Grantee.
- 5.3 **Communication and Energy Source Structures.** Notwithstanding any provision in this Agreement to the contrary, freestanding or attached towers, exterior antennas, wind turbines, solar panels, or similar communications or energy-producing structures shall not be installed or affixed on the Premises without the

prior written approval of Grantee; and installing or affixing towers and wind turbines on the Main Block is prohibited.

- 5.4 Topographical Changes and Landscaping.** In order to protect the historic setting and Protected Features of the Butters-Avery House, no alterations may be made to the topography of the Premises that either raise or lower grade levels by more than one (1) foot. No soil, loam, rock or mineral resource or natural deposit shall be excavated, dredged or removed from the Premises, and no soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever shall be placed, filled, stored or dumped thereon, provided that this Subsection shall not be deemed to prohibit improvements and activities approved under Subsection 5.1 or 5.2, if any, or permitted under Subsection 5.6. The provisions of this Subsection 5.4 shall not be deemed to restrict activities necessary and desirable (i) to preserve or protect the Premises, (ii) to maintain existing trees, lawn, garden or utilities associated with the Premises, (iii) for the planting of trees, shrubs, flowers, herbs or grasses or (iv) related to an approved Archaeology Plan or restoration after archeological activity as provided for in Subsection 5.11.
- 5.5 Demolition.** Grantor shall not permit or allow to occur, either through positive action or neglect, demolition of the Butters-Avery House.
- 5.6 Relocation.** No portion of the Butters-Avery House shall be moved from its present location unless such moving is required by a taking through eminent domain.
- 5.7 Signs.** No signs, billboards or other advertising displays shall be placed on, painted onto or affixed to the Butters-Avery House or the Premises except that, subject to Grantee's prior written approval, Grantor may erect an approved sign or marker which identifies the historical significance and associations of the Premises. This paragraph shall not prevent Grantor from placing temporary, free-standing signs on the lawn provided such signs are in accordance with local law.
- 5.8 Use.** Grantor shall not permit any use to be carried on, in or around the Premises that is unlawful, constitutes a nuisance, or which is determined by Grantee to be inconsistent with the intent of this Agreement or to adversely affect the historic significance of the Butters-Avery House and surrounding landscape. Without limiting the generality of the foregoing, the Premises may be used for a single-family residence, which may include a portion of the Premises for a home professional office for a member of the family in residence, provided that such use is permitted by local zoning ordinances. With respect to matters not covered by this Agreement, Grantor shall have the right to operate and use the Premises in such manner as it determines, provided that such operation and use is not inconsistent with the intent of this Agreement.

**5.9 Maintenance.**

**5.9.1 General.** Grantor covenants at all times to maintain the Butters-Avery House and the Premises in good and sound state of repair in order to prevent the deterioration or destruction through alteration or neglect of Protected Features.

**5.9.2 Cost of Maintenance.** Grantor shall assume the total cost of continued maintenance, repairs and administration of the Premises in order to preserve the protected architectural and historic features, materials, appearance and workmanship of the Butters-Avery House. Grantor covenants that it shall indemnify and hold Grantee harmless from and against any such costs. The foregoing shall not prohibit the Grantor from seeking financial assistance for the foregoing purposes from any sources available to it.

**5.10 Compliance with Law.** Nothing contained herein shall be interpreted to authorize or permit the Grantor to violate any law, ordinance or regulation relating to building materials, construction methods or use. In the event of any conflict between any law, ordinance or regulation and the terms hereof, Grantor promptly shall notify Grantee in writing of such conflict and shall cooperate with Grantee and local authorities to accommodate the purposes of both this Agreement and such law, ordinance or regulation. No construction and no other alteration or change of use or occupancy which would create such conflict, or cause such conflicting law, ordinance or regulation to be applicable to the Butters-Avery House or any protected element thereof, shall be undertaken without the prior written approval of Grantee.

**5.11 Archaeology.** The conduct of archaeological activities, including without limitation archaeological surveys, excavation for the purpose of archaeology and artifact retrieval may occur only in accordance with an archaeological field investigation plan (the "Archaeology Plan") prepared by or on behalf of the Grantor and approved in advance of such activity in writing by the State Archaeologist of the Massachusetts Historical Commission (or, if Massachusetts General Laws ceases to require approval by the Massachusetts Historical Commission for the perpetual enforceability of historic preservation restrictions, then by the official recognized by Grantee from time to time as having responsibilities for preservation of archaeological resources in the Commonwealth of Massachusetts). Plans for restoration of the site of archaeological activity shall be submitted to Grantee in advance of restoration, and such restoration shall be conducted only in accordance with a plan approved by Grantee.

**6. INSURANCE.**

**6.1 Property.** Grantor, at its expense, shall carry and maintain at all times property

damage insurance on the Butters-Avery House with full replacement cost coverage against loss from all perils commonly covered under the broadest standard homeowner's policy form in use from time to time, including without limitation fire, lightning, wind storm, hail, explosion, damage by vehicles, smoke, vandalism, malicious mischief, weight of ice, snow, or sleet, freezing of plumbing, HVAC or sprinkler systems, and sudden and accidental damage from artificial electrical current explosion.

- 6.2 Liability.** Grantor, at its expense, shall carry and maintain at all times general liability insurance with coverage against claims for personal injury, death, and property damage, identifying the Butters-Avery House as covered premises, and for not less than one million dollars (\$1,000,000) per person per occurrence, such sum to be increased from time to time to reflect increases in the cost of living from the date of this Agreement; or other insurance as deemed acceptable.
- 6.3 Other Requirements.** Every policy required pursuant to this Section 6 shall be issued by an insurance company rated "A" or better by A.M. Best Company or equivalent rating by a comparable rating service, and shall provide for the sending of any and all notices of cancellation by the insurer to Grantee at least twenty (20) days prior to any cancellation taking effect. Grantor shall promptly provide copies of all insurance policies required by this Section and all supplements or endorsements thereto to Grantee.
- 6.4 Changes in Practice.** Grantee reserves the right to change the coverage requirements provided under this Section 6 from time to time to reflect changes in the best practices for property and liability coverages for historic houses in New England provided Grantee first gives Grantor thirty (30) days advance notice of any such change.

## **7. CASUALTY DAMAGE.**

- 7.1 Notice.** In the event that the Butters-Avery House or any portion thereof is damaged or destroyed, Grantor shall notify Grantee in writing within seven (7) days of the damage or destruction, and such notification shall identify what, if any, emergency protective work has already been completed.
- 7.2 Restoration.** Except as set forth in this Section, in the event of any casualty damage (as hereinafter defined), (a) Grantor shall submit to Grantee a proposal in accordance with Section 12 of this Agreement for Grantee's approval to restore the Butters-Avery House using similar materials, workmanship and design and in a manner which shall protect those Protected Features which have not been totally destroyed, and (b) Grantor shall then restore the Butters-Avery House in accordance with such proposal as Grantee has approved. Grantee shall release casualty insurance proceeds to fund such approved restoration, and any casualty

insurance proceeds in excess of the cost of such restoration shall be released as directed by Grantor.

- 7.3 Substantial Casualty.** Notwithstanding any other provision of this Agreement to the contrary, in the event of substantial casualty damage to the Butters-Avery House, Grantor may request the approval of Grantee not to restore the Butters-Avery House pursuant to this Agreement. If Grantee, in its sole discretion, determines that the extent or nature of such casualty damage would prevent restoration in a manner which would protect the remaining Protected Features, then Grantee may grant such approval and Grantor may elect not to restore the Butters-Avery House pursuant to this Agreement. In the event of such approval not to restore, before any remaining portion of the Butters-Avery House is relocated or otherwise altered, Grantor shall allow Grantee to enter onto and into the Premises for the purpose of choosing and removing for posterity any such Protected Features, or portions thereof, together with the materials in which such features are set, that Grantee desires to salvage, and thereupon all casualty insurance proceeds shall be released as directed by Grantor.
- 7.4 Damage Defined.** For the purposes of this Agreement casualty damage shall be defined as such sudden damage or loss which would qualify for a loss deduction pursuant to Section 165(c)(3) of the Internal Revenue Code (construed without regard to the legal status, trade, or business of the Grantor or any applicable dollar limitations).
- 8. CONDEMNATION.** If the Premises, or any substantial portion thereof, shall be made the subject of a procedure threatening a taking through eminent domain, or if Grantor shall receive notice from a governmental authority of the intent to institute such proceeding, Grantee shall immediately be given notice thereof by Grantor. Grantee shall have the right to enter its name as an additional party in eminent domain proceedings, pursuant to Massachusetts General Laws, Chapter 79, Section 5A, but shall not have the right to any monetary award which would diminish the award to be made to Grantor resulting from such taking. In the event of such taking, Grantee shall have the right to enter onto and into the Premises (or portion thereof subject to such taking) for the purpose of choosing and removing for posterity any Protected Features, or portions thereof, together with the materials in which such features are set, that Grantee desires to salvage, prior to the effective date of such taking.
- 9. TAXES.** Grantor shall pay on or before the due date all general taxes, special taxes, special assessments, water charges, sewer service charges and other charges which may become a lien on the Premises.
- 10. INDEMNIFICATION.** Grantor shall indemnify, defend with counsel acceptable to Grantee, and hold Grantee harmless from and against any claims, liability, costs, attorneys' fees, judgments or expenses to Grantee or any officer, employee, agent or independent contractor of Grantee resulting from actions or claims of any nature by third

parties arising in connection with or out of this Agreement, including without limitation claims related to the presence of oil or hazardous substances.

11. **INSPECTION.** Grantee may inspect the Premises at least annually to ensure that the Grantor is in compliance with the preservation restrictions hereby imposed. In addition, Grantee may inspect the Premises more frequently during periods of repair, renovation or reconstruction as Grantee deems appropriate for the nature of the work being conducted. Grantor agrees to grant Grantee free access to all areas of the Premises. Such inspections shall be made at reasonable hours and only after prior notice to the Grantor. This right of inspection shall be assignable by Grantee to any governmental body or qualified non-profit entity whose purposes include preservation of structures or sites of historic or aesthetic significance. The failure of Grantee to exercise this right of inspection for any period of time, however, shall under no circumstances be construed as a waiver of such right.

12. **WRITTEN APPROVAL.**

12.1 **Approval.** Whenever Grantor desires to undertake any activity which, by the terms of this Agreement, is not to be undertaken without Grantee's approval, Grantor shall first deliver to Grantee a written request for approval, describing the specific activity proposed (including, but not limited to, the nature, scope, schedule, budget and, if applicable, materials, design and location thereof, and by whom the activity will be performed) in sufficient detail as determined by Grantee to enable it to evaluate the proposed activity and the potential effect thereof upon the features and interests protected by this Agreement (a "Request for Approval"). Grantor shall supplement the written Request for Approval with any and all supplementary documentation, including, but not limited to, architectural drawings, site plans, photos or digital images, as Grantee determines are necessary to fully describe the proposed activity for the purposes of this section 12. In exercising its discretion, Grantee shall apply standards that it establishes from time to time of general applicability to similar historic properties on which it holds preservation restrictions. Approval by Grantee for any such activity shall be in recordable form, executed and acknowledged by any one or more of the President, Treasurer, Director or such officer or officers who may succeed to their responsibilities under other titles.

12.2 **Waiver; Other Approval.** Grantee may, in its sole discretion, waive the submittal of a Request for Approval or the issuance of a recordable approval, or both, for any activity described in Section 4. Notwithstanding any other provision of this Agreement to the contrary, Grantee may, in its sole discretion, grant written approval for any other activity by Grantor which is restricted by any provision of this Agreement in addition to those activities which are not to be undertaken without approval by Grantee, but only in accordance with the procedures set forth in Subsection 12.1.

**12.3** **Timing.** Grantee shall grant or deny its approval for such proposed activity not later than sixty (60) days after the later of the date (i) Grantee has received a Request for Approval or (ii) Grantee either inspects the Premises, as mutually and reasonably agreed upon by Grantee and Grantor, for the purpose of evaluating such proposal or delivers to a Grantor a written waiver of such inspection. If Grantee does not give the Grantor a written request for such inspection within sixty (60) days after Grantee has received a Request for Approval, Grantee shall be deemed to have waived such inspection for such proposal. The provisions of this Subsection 12.3 shall not apply to any proposed activity that is prohibited by the terms of this Agreement.

**12.4** **Conditions.** Grantee may approve or deny all or any portion of the activity set forth in a Request for Approval, or grant its approval subject to conditions, or any combination thereof. Such conditions may include the expiration of such approval to activity conducted within a certain period of time or prior to conveyance of the Premises. If an activity is conditionally approved, such activity shall not be undertaken except in compliance with such condition(s) and the failure to conform to such condition(s) shall be a breach of this Agreement. Approval as to any activity shall under no circumstances be construed to waive the requirement for approval for any other activity or for a duplication of the same activity at a later time or affecting any other portion of the Premises.

### **13. DISPUTE RESOLUTION.**

**13.1** **Submittal.** Grantor agrees that if any dispute shall arise between it and Grantee concerning the terms or conditions of this Agreement or their application in any instance, Grantor and Grantee shall, submit such dispute for resolution by arbitration in Boston, Massachusetts, by the American Arbitration Association, its successor, or other arbitral forum as mutually agreed by Grantor and Grantee (the "Arbitration Association"), and such arbitration shall be submitted, commenced, held and determined in accordance with the Commercial rules and regulations of the Arbitration Association, as hereby modified. The provisions of this Section 13 shall not, however, limit the provisions of Section 14, and if Grantor shall submit any such dispute to arbitration as aforesaid and Grantee shall elect to seek injunctive relief or otherwise litigate the subject matter of such dispute, Grantee shall give notice of such election to the Arbitration Association. In such circumstances, the arbitration shall be recessed or adjourned if the outcome of the action brought by Grantee may render the arbitration moot. Once arbitrated, the decision of arbitration shall be binding and enforceable in any court of competent jurisdiction, subject to Subsection 14.2 hereof.

**13.2** **Appointment and Procedure.** In the arbitration of any dispute involving Sections 2, 3, 4, 5, 7, 8 or 16.1 hereof, all arbiters shall have a bachelor's or graduate degree in architecture, art history or historic preservation and at least ten years' experience in the field of preservation of historically significant structures

or artifacts. Each party shall nominate a qualified arbiter by notice to the Arbitration Association and the other party within thirty (30) days of the initial demand for arbitration, describing such qualifications. All challenges to a proposed arbiter's qualifications shall be submitted to the Arbitration Association within ten (10) days thereafter and all such challenges shall be decided by the Arbitration Association. The two arbiters appointed by the parties shall name a third neutral arbiter within ten (10) days after such challenge period expires. Within thirty (30) days of the appointment of the third arbiter, the panel of arbiters shall take evidence and argument and close the hearing, and they shall decide the matter and issue their decision within thirty (30) days after close of the hearing. Without limiting the generality of this Section, the fees and expenses of arbitration charged by the Arbitration Association shall be borne equally between Grantee and Grantor unless the arbiters determine that some other division shall under the circumstances be more equitable and such determination of the arbiters shall be conclusive and binding upon the parties. Notwithstanding anything to the contrary in this Subsection 13.2, if Grantor shall fail to name a qualified arbiter in the time allotted, there will be only one arbiter, appointed by Grantee.

**13.3 Communications.** The provisions of this Subsection 13.3 shall not limit the generality of any other provision of this Agreement. If Grantee elects to give Grantor written notice that Grantor has failed to perform or observe any restriction, agreement or condition in this Agreement contained on its part to be performed or observed (a "Violation Letter"), Grantor may respond in writing within thirty (30) days of the giving of such notice, disputing the existence of such failure and demanding arbitration thereof (an "Objection Letter"). Grantee may record notice of such Violation Letter with the Registry. Notwithstanding the provisions of Subsection 13.1, Grantor may not thereafter demand arbitration of the subject matter of the Violation Letter unless Grantor's Objection Letter includes such demand for arbitration. If Grantor does not timely deliver an Objection Letter to Grantee, Grantor shall conclusively be deemed to agree with the contents of the Violation Letter and to waive all right thereafter to dispute the existence of such failure. If an arbitration finds that the failure that is the subject of a Violation Letter does not exist, the arbitrators may require Grantee to record with the Registry a rescission or extinguishment of any notice of such Violation Letter recorded with the Registry. Whether or not Grantor delivers an Objection Letter to Grantee, if the activity that gave rise to the Violation Letter remains in progress, Grantor shall immediately cease such activity.

## **14. ENFORCEMENT.**

**14.1 General.** If Grantor shall fail to perform or observe any restriction, agreement or condition in this Agreement contained on its part to be performed or observed, Grantor acknowledges that such a failure will cause Grantee irreparable harm, and Grantee shall have the right to enforce this Agreement by appropriate legal proceedings and to obtain injunctive and other equitable relief against any

violations, including, without limitation, relief requiring restoration of the Premises to its condition prior to the time of the injury complained of (Grantor agreeing that Grantee has no adequate remedy at law if Grantor shall fail to perform or observe any restriction, agreement or condition contained in this Agreement). The foregoing shall be in addition to, and not in limitation of, any other rights and remedies available to Grantee.

**14.2 Venue and Jurisdiction.** This Agreement shall be governed by the laws of the Commonwealth of Massachusetts. Grantor hereby irrevocably consents and agrees that any legal action, suit or proceeding arising out of or in any way in connection with this Agreement may be instituted or brought in a court of appropriate jurisdiction in the Commonwealth of Massachusetts, or in the courts of any other jurisdiction wherein Grantee's business office(s) may be located, as Grantee may elect. By execution and delivery of this Agreement, Grantor irrevocably accepts and submits to the non-exclusive jurisdiction of any such court and to service of any summons, complaint and/or legal process by registered or certified United States mail, postage prepaid, to Grantor at the Premises, such method of service to constitute, in every respect, sufficient and effective service of process in any legal action or proceeding. The Parties shall not seek a trial by jury in any lawsuit, proceeding, counterclaim or any litigation procedure based upon or arising out of this Agreement or the dealings or the relationship between Grantee and Grantor, or any person claiming by, through or under Grantor.

**14.3 Self Help.** If Grantor shall fail to perform or observe any restriction, agreement or condition in this Agreement contained on its part to be performed or observed, other than an obligation to pay money, and shall not cure such default within seven (7) days after notice from Grantee specifying the failure, Grantee may, at its option, without waiving any other remedy or any claim for damages for breach of this Agreement, at any time thereafter apply for and obtain in its own name or in Grantor's name such permits and approvals as may be necessary to cure such failure, enter upon the Premises, and cure such failure for the account of Grantor, and any amount paid or any contractual liability incurred by Grantee in so doing shall be deemed paid or incurred for the account of Grantor, Grantor agreeing to reimburse Grantee promptly therefor and save Grantee harmless therefrom. Grantee may cure any such failure as aforesaid prior to the expiration of said waiting period, but after notice to Grantor, if the curing of such failure prior to the expiration of said waiting period is reasonably necessary to protect the Premises or any Protected Features. Without limiting the generality of this Subsection 14.3, Grantor's obligation to reimburse Grantee as aforesaid shall be entitled to the status of a contract pursuant to Massachusetts General Laws, Chapter 254, as amended from time to time (sometimes known as the Mechanics' Lien Law) and in order to cause this Agreement to constitute a Notice of Contract or such other notice as is necessary to afford Grantee the right to file a claim pursuant thereto, notice is hereby given that by virtue of this Agreement between Grantor and Grantee, as contractor for the purposes of this Subsection 14.3, Grantee may

furnish labor and material or rental equipment, appliances or tools for the erection, alteration, repair or removal of a building, structure, or other improvement on the Premises as set forth in this Section.

- 14.4 Costs and Expenses.** Grantor shall indemnify and hold harmless Grantee, and shall pay to Grantee on demand, all costs and expenses, including but without limitation attorneys' disbursements and fees, incurred by Grantee in connection with enforcement of this Agreement. If Grantor is required pursuant to this Agreement to pay a sum of money to Grantee, the obligation to pay such sum constitutes a lien upon the Premises for the amount of such sum until it is paid, and if Grantor shall fail to pay all or any portion of such sum within thirty (30) days of Grantee's written demand therefor, Grantor shall also pay to Grantee interest on the unpaid amount an annual rate equal to the lesser of the judgment interest rate then in effect under the laws of the Commonwealth of Massachusetts or the rate on yield on United States Treasury ten (10) year notes issued most recently before such any of sum began to be incurred, plus three hundred (300) basis points.
- 14.5 Mortgage Protection.** Any lien which may arise pursuant to this Section 14 shall be subject and subordinate to a first mortgage of record held by a bank, saving and loan association, trust company, credit union, insurance company, pension fund or other institutional lender to the extent of the principal amount secured by such mortgage and disbursed as of the date such notice of lien is recorded.
- 14.6 No Waiver.** Failure of Grantee to complain of any act or omission on the part or Grantor, no matter how long the same may continue, shall not be deemed to be a waiver by Grantee of any of its rights hereunder. No waiver by Grantee at any time, express or implied, of any breach of any provision of this Agreement shall be deemed a waiver of a breach of any other provision of this Agreement or a consent to any subsequent breach of the same or any other provision. No waiver by Grantee at any time of the requirements for submittal of a Request for Approval or issuance of a recordable approval, pursuant to Subsection 12.2, for an activity described under Section 4 shall be deemed a waiver of such requirements as to such activity at any other time or as to any other activity. No payment by Grantor or acceptance by Grantee of a lesser amount than shall be due from Grantor to Grantee shall be deemed to be anything but payment on account, and the acceptance by Grantee of a check for a lesser amount with an endorsement or statement thereon or upon a letter accompanying such check that such lesser amount is payment in full shall not be deemed an accord and satisfaction, and Grantee may accept such check without prejudice to recover the balance due or pursue any other remedy. Any and all rights and remedies which Grantee may have under this Agreement or by operation of law, either at law or in equity, upon any breach shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other, and no one of them, whether exercised by Grantee or

not, shall be deemed to be in exclusion of other, any two or more or all of such rights and remedies being exercisable at the same time.

**14.7 Estoppel Certificate.** Grantee agrees to deliver to Grantor and/or to any holder of a mortgage on the Premises identified by Grantor a statement to Grantee's knowledge whether Grantor is in compliance with this Agreement, not later than thirty (30) days after the later of the date (i) Grantee has received a written request for such statement from Grantor, or (ii) Grantee either inspects the Premises, as mutually and reasonably agreed upon by Grantee and Grantor, for the purpose of responding to such request or delivers to a Grantor a written waiver of such inspection. If Grantee does not give the Grantor a written request for such inspection within fifteen (15) days after Grantee has received such request from Grantor, Grantee shall be deemed to have waived such inspection for such request.

**15. EXTINGUISHMENT.** Grantor and Grantee acknowledge the possibility that circumstances may arise in the future to render the purpose of this Agreement impossible to accomplish. In addition, both parties recognize that the possibility of condemnation and casualty always exists. In the event such circumstances do in fact arise, the parties agree that those provisions of this Agreement which are rendered impossible of performance by such circumstances, condemnation or casualty, may be extinguished by judicial proceedings in a court of competent jurisdiction and in compliance with the applicable requirements of Massachusetts General Laws chapter 184, section 32, as it may be amended from time to time, including approvals by the Town of Wilmington and the Massachusetts Historical Commission following public hearings to determine that such extinguishment is in the public interest. All other provisions of this Agreement shall remain in full force and effect unless and until this Agreement is terminated or extinguished in compliance with said requirements.

**16. TRANSFERS.**

**16.1 Subdivision and Leasing.** The Premises shall not be subdivided for conveyance or lease, provided that this Section shall not be deemed to prohibit the leasing of the Butters-Avery House for uses permitted by this Agreement. For the purposes of this Agreement, the definition of "to subdivide" shall include to cause any portion of the land less than the entirety thereof to be divided, conveyed or made conveyable as a distinct parcel apart from the remainder of the land, including, to submit a plan which shows the land as other than one unitary lot for the preliminary or final approval or endorsement of any governmental authority for such a division, or to cause any such plan (whether or not approved or endorsed by a governmental authority) to be filed or recorded with any land records office or registry. Any lease or occupancy agreement of the Premises or any portion thereof shall be in writing and shall include the following notice in capitalized letters: "This Lease is subject to a Preservation Restriction Agreement granted to the Society for the Preservation of New England Antiquities D. B.A. Historic

New England, a copy of which is attached hereto, which substantially restricts construction, alteration and redecorating activities inside and outside the Premises subject to this Lease. Notwithstanding any other provision of this Lease, no such activity shall be undertaken without prior review of such restrictions and strict compliance therewith. Any failure to comply with such restrictions may, at Landlord's sole discretion, be deemed a default under this Lease."

- 16.2 Insertion in Subsequent Instruments.** Grantor shall insert a reference to this Agreement, such reference to include Registry book and page number of this Agreement, into any subsequent deed or other legal instrument by which Grantor divests itself of either the fee simple title to or any lesser estate in the Premises. Concurrently, with its entering into any such deed or other legal instrument, Grantor shall give written notice to Grantee of same. Failure by Grantor to comply with the requirements of this Subsection 16.2 shall not affect the validity, enforceability or priority of this Agreement or any lien arising hereunder.
- 16.3 Written Acceptance.** Before taking legal possession of the Premises or any portion thereof, each new Grantor of the Premises shall indicate its acceptance of these preservation restrictions contained herein by a letter to Grantee. Such acceptance shall include a promise to maintain at all times and in good condition, the significant historical, architectural, scenic and environmental characteristics of the Premises covered by these restrictions. Failure by any new Grantor to so indicate, and failure by Grantee to demand such indication, shall not affect the validity, enforceability or priority of this Agreement or any lien arising hereunder.
- 16.4 Restrictions Run with the Land.** Notwithstanding anything to the contrary contained in Section 16 above, the burden of this Agreement shall constitute a binding servitude, shall run with the land in perpetuity.
- 16.5 Assignment.** All of the rights and restrictions enforceable by Grantee pursuant to this Agreement shall be assignable by Grantee for preservation purposes only and without consideration, to any governmental body or any entity described in Section 170(b)(1)(A) of the Internal Revenue Code of 1986 as amended whose purposes include preservation of structures or sites of historic or architectural significance in perpetuity. Any such non-governmental entity must also be qualified to hold preservation restrictions under Massachusetts General Law, Chapter 184, Section 32.
- 17. NOTICES.** Every notice, request, demand, consent, waiver or other communication which either party hereto may be required to give to the other party pursuant to this Agreement, shall be in writing and shall be given either by postage prepaid registered or certified U.S. mail with return receipt requested or by a national overnight delivery service with acknowledgment of receipt required--if to Grantor, then to Grantor at the Premises, and if to Grantee, then to the Historic New England Stewardship Program, Historic New England, 185 Lyman Street, Waltham, Massachusetts 02452-5645. Each

party may change its address set forth herein by written notice to such effect to the other party. Such notice, etc., shall be deemed given as of the sooner of the date of signed receipt or the date when delivery was first attempted.

18. **SUBORDINATION OF PRIOR LIENS.** Grantor represents and warrants to Grantee that the Premises are subject to no mortgages, liens, leases, restrictions, easements or encumbrances prior in right to this Agreement.
19. **MISCELLANEOUS.** The following provisions in this Section 19 shall govern the effectiveness, interpretation and duration of this Agreement:
  - 19.1 **Counterparts.** This Agreement, with all exhibits hereto, is executed in three (3) identical counterparts. After execution hereof, one (1) such counterpart shall be held by each of Grantor and Grantee, and one (1) such counterpart shall be recorded immediately at the Registry.
  - 19.2 **Strict Construction.** Any rule of strict construction designed to limit the breadth of restrictions on alienation or use of property shall not apply in the construction or interpretation of this Agreement, and this Agreement shall be interpreted broadly to effect its purposes, and the restrictions herein contained.
  - 19.3 **Owner.** This Agreement shall extend to and be binding upon the Grantor, and all persons hereafter claiming under or through the party executing this Agreement as "Grantor" and all successors in title to the Premises, and the word "Grantor" when used herein shall include all such persons, whether or not such persons have signed this Agreement or now have an interest in the Premises. A person who ceases to hold title to the Premises after having been a Grantor shall cease to have any liability hereunder to Grantee except that such person shall remain jointly and severally liable with the successors as Grantor for any monetary liability hereunder to Grantee that accrued during the time of such person's ownership.
  - 19.4 **Amendment.** For purposes of furthering the preservation of the Butters-Avery House and of furthering the other purposes of this Agreement, and of meeting changing conditions, Grantor and Grantee are free to amend jointly the terms of this Agreement in writing in accordance with the requirements of Massachusetts General Laws, Chapter 184, Sections 31-33, and such amendment shall become effective upon recording at the Registry.
  - 19.5 **Validity of Agreement.** This Agreement is made pursuant to Massachusetts General Laws, Chapter 184, Sections 31-33, but the invalidity of such statutes or any part thereof shall not affect the validity and enforceability of this Agreement according to its terms, it being the intent of the parties to agree and to bind themselves, their heirs, successors, administrators and assigns in perpetuity to each clause of this Agreement whether it be enforceable by reason of any statute, common law or private agreement either in existence now or at any time

subsequent hereto. This Agreement may be re-recorded at any time by any person if the effect of such re-recording is to make more certain enforcement of this Agreement or any part thereof. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement or any ancillary or supplementary agreement relating to the subject matter herein.

- 19.6 Captions.** The captions used as headings for the various Sections and Subsections of this Agreement are used only as matter of convenience for reference, and are not to be considered a part of this Agreement or used in determining the intent of the parties to this Agreement.
- 19.7 No Warranty.** The approval by Grantee of any action by Grantor, including without limitation, the approval of the design of any alteration or construction, shall not constitute a warranty, representation or acknowledgment that any action taken in conformity with such approval shall comply with any law, regulation, order, ordinance, code or by-law or shall be suitable for any particular purpose, and Grantor shall be solely responsible for its own actions.
- 19.8 Time.** Where a specific number of days are stated for an activity to occur, time is of the essence. If any act required under this Agreement becomes due on a Saturday, Sunday or legal holiday in the Commonwealth of Massachusetts, then such act shall be due on the immediate following business day/
- 19.9 Grantee's Use of Information.** During inspection of the Property and at other times reasonably agreed upon by the Grantor, including preparation of the baseline documentation, Grantee may make photographs, drawings, or other representations documenting the significant historical, cultural, and architectural character and features of the Property and may use such images and materials to promote Grantee's programs regarding historic preservation restrictions and otherwise in support of its educational and charitable purposes, including reproduction in magazines, newsletters, or other publicly available publications.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

WITNESS

SOCIETY FOR THE PRESERVATION  
OF NEW ENGLAND ANTIQUITIES  
D.B.A. HISTORIC NEW ENGLAND

\_\_\_\_\_  
Carl R. Nold, President and CEO

COMMONWEALTH OF MASSACHUSETTS

County of Suffolk, ss.

On this \_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned notary public, personally appeared Carl R. Nold, President and CEO, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as President and CEO of Historic New England, a corporation.

\_\_\_\_\_  
Notary Public

My commission expires:

WITNESS

TOWN OF WILMINGTON

\_\_\_\_\_

\_\_\_\_\_  
Jeffrey M. Hull, Town Manager

COMMONWEALTH OF MASSACHUSETTS

County of Middlesex, ss.

On this \_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as Town Manager of the Town of Wilmington.

\_\_\_\_\_  
Notary Public

My commission expires:

**APPROVAL OF PRESERVATION RESTRICTIONS**

**Pursuant to General Laws, Chapter 184, Section 32**

**BUTTERS-AVERY HOUSE  
165 CHESTNUT STREET  
WILMINGTON, MASSACHUSETTS**

The undersigned Executive Director and Clerk of the Massachusetts Historical Commission, hereby certifies that the foregoing preservation restrictions on the Butters-Avery House located at 165 Chestnut Street, Wilmington, Massachusetts, have been approved pursuant to Massachusetts General Laws, Chapter 184, Section 32.

\_\_\_\_\_  
Brona Simon, Executive Director and Clerk  
Massachusetts Historical Commission

**COMMONWEALTH OF MASSACHUSETTS**

County of Suffolk, ss.

On this \_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned notary public, personally appeared Brona Simon, Executive Director and Clerk, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose as Executive Director and Clerk for the Massachusetts Historical Commission.

\_\_\_\_\_  
Notary Public

My commission expires:

**APPROVAL OF PRESERVATION RESTRICTIONS**

**Pursuant to General Laws, Chapter 184, Section 32**

**Butters-Avery House  
165 Chestnut Street  
Wilmington, Massachusetts**

The undersigned members of the Board of Selectmen in the Town of Wilmington, Massachusetts hereby certify that the foregoing Preservation Restrictions on the Butters-Avery House, so called, located at 165 Chestnut Street, Wilmington, Massachusetts have been approved pursuant to Massachusetts General Laws, Chapter 184, Section 32.

In approving these restrictions, the Town of Wilmington assumes no responsibility, nor accepts any liability for enforcement.

As they are the members  
of the Board of Selectmen  
for the Town of Wilmington

\_\_\_\_\_  
Michael L. Champoux, Chairman

**COMMONWEALTH OF MASSACHUSETTS**

County of Middlesex, ss.

On this \_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned notary public, personally appeared Michael L. Champoux, Selectman, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as Selectman for the Town of Wilmington.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_  
Judith L. O'Connell, Selectman

**COMMONWEALTH OF MASSACHUSETTS**

County of Middlesex, ss.

On this \_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned notary public, personally appeared Judith L. O'Connell, Selectman, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose as Selectman for the Town of Wilmington.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_  
Louis Cimaglia, IV, Selectman

**COMMONWEALTH OF MASSACHUSETTS**

County of Middlesex, ss.

On this \_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned notary public, personally appeared Louis Cimaglia, Selectman, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as Selectman for the Town of Wilmington.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_  
Michael V. McCoy, Selectman

**COMMONWEALTH OF MASSACHUSETTS**

County of Middlesex, ss.

On this \_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned notary public, personally appeared Michael V. McCoy, Selectman, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as Selectman for the Town of Wilmington.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_  
Michael J. Newhouse, Selectman

**COMMONWEALTH OF MASSACHUSETTS**

County of Middlesex, ss.

On this \_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned notary public, personally appeared Michael J. Newhouse, Selectman, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as Selectman for the Town of Wilmington.

\_\_\_\_\_  
Notary Public

My commission expires:

**EXHIBIT A**

**DESCRIPTIONS OF PREMISES**

The land with the buildings and improvements thereon, situated in Wilmington, Middlesex County, Massachusetts being identified as Lot 6 as shown on a plan entitled "165 Chestnut Street, Wilmington, Massachusetts, Plan of Land of Velma M. Emery," prepared by GCG Associates, Inc., dated May 24, 2005 and recorded with the Registry in Plan Book 219 as Plan No. 20.



**EXHIBIT B**

**PHOTOGRAPHS**

**(to be attached by Grantee)**

**EXHIBIT B**

**PHOTOGRAPHER'S AFFIDAVIT**

J. David Bohl, being first duly sworn, states on oath as follows:

1. This affidavit is attached to a set of XXXX (XX) photographs printed from the original negatives developed from the film exposed by me on XXXX. Each photograph bears a letter-number symbol in the lower left hand corner on the reverse side, Historic New England negative numbers XXXXX-A to XXXXX-A.
2. Each such exposure was made with a Parallax corrected Cambo 4x5 view camera with no filter, using TMAX 400 film at normal exposure and shutter speed settings.
3. Each such negative was developed by me in a normal manner without manipulation. No negative was created by more than one exposure and each such negative was delivered to Historic New England for permanent safekeeping.
4. Manufacturers' specifications and recommendations were followed with respect to all photographic materials used, with respect to film exposure, negative developing, photograph printing, and with respect to the care and maintenance of all such materials and final products.

FURTHER AFFIANT SAYETH NOT.

\_\_\_\_\_  
Date

\_\_\_\_\_  
J. David Bohl

On this \_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned notary public, personally appeared J. David Bohl, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public

My commission expires:

**EXHIBIT C**

**FLOOR PLANS**

**(to be attached by Grantee)**

**EXHIBIT D**

**SITE PLAN**

**(to be attached by Grantee)**

**DRAFT**  
**REHABILITATION PLAN AGREEMENT**

**BUTTERS-AVERY HOUSE**

The parties to this Rehabilitation Plan Agreement (the "Agreement") are the **Society for the Preservation of New England Antiquities, D.B.A. Historic New England**, a Massachusetts charitable corporation having an address at the Harrison Gray Otis House, 141 Cambridge Street, Boston, Massachusetts 02114-2702 ("Historic New England"), and the **Town of Wilmington**, having an address at 121 Glen Road, Wilmington, Massachusetts, 01887-3500 ("Owner").

Owner is the owner in fee simple of property located **165 Chestnut Street, Wilmington, Massachusetts** which includes certain premises (the "Premises") consisting of .56 acres of land, being more particularly described in Exhibit A attached hereto and in that certain deed (the "Deed"), recorded with the Middlesex North District Registry of Deeds at Book 2061, Page 233 together with all improvements thereon (the "Premises"). The Premises are subject to preservation restrictions contained in that certain Preservation Restriction Agreement (the "PRA") between the Town of Wilmington and Historic New England, dated \_\_\_\_\_, recorded with the Middlesex North District Registry of Deeds at Book \_\_\_\_\_, Page \_\_\_\_\_.

The Butters-Avery House is historically significant and worthy of preservation. Owner and Historic New England have the common purpose of conserving and preserving the value and significance of the Premises. In the interest of preserving the Butters-Avery House in a structurally sound and secure condition, as well as preventing further deterioration of the structure, Owner hereby agrees to undertake the following enumerated rehabilitation work and repairs (the "Rehabilitation Plan"), not necessarily in order of priority, as well as other work and repairs which cannot be ascertained at this time, but which may become apparent during the execution of this Rehabilitation Plan. Owner agrees that replacement, rebuilding, repair, and reconstruction of features of the Butters-Avery House shall be done following proper rehabilitation methodology, as set forth on *Exhibit B* attached hereto and incorporated herein, and in accordance with the *Secretary of the Interior's Standards for Rehabilitation* as they may be amended from time to time, to ensure that protected features of the exterior and interior of the Butters-Avery House as identified in the above referenced PRA are not adversely affected. Owner agrees that all work shall be performed in a good and workmanlike manner, all materials being of the highest quality, matching in-kind those materials being replaced.

Historic New England agrees to the following rehabilitation work as set forth below:

1. Roof – Historic New England agrees that the existing asphalt roof shingles may be removed and replaced according to the methods set forth in *Exhibit B*;
2. Chimney Work – Historic New England agrees that the existing chimney of the house may be rebuilt from the attic floor through the roof. All work must comply with the methods set forth in *Exhibit B* and be performed by a qualified mason;
3. Electrical – Historic New England agrees that Owner may upgrade the existing electrical service and wiring in the house provided that no structural or framing members are cut or otherwise altered without Historic New England's prior review and approval;
4. Plumbing – Historic New England agrees that Owner may upgrade the existing plumbing in the house provided that no structural or framing members are cut or otherwise altered without Historic New England's prior review and approval;
5. Kitchen and Bathrooms – Historic New England and Owner mutually agree that the existing kitchen and bathrooms in the house must be upgraded or replaced. Historic New England agrees that Owner may select to remodel the existing spaces or relocate the kitchen and bathrooms to other areas of the house provided that no protected features of the house are permanently damaged or adversely affected in the process; and
6. Structural Members and Framing – Historic New England and Owner agree that considerable work is necessary to repair and replace deteriorated structural members and framing including sills, posts, joists and beams, and that further investigation is needed to determine the full scope of necessary work. Historic New England agrees that a plan for structural repairs shall be created following the guidelines set forth in *Exhibit B*.

In addition to the above rehabilitation work, Owner and Historic New England acknowledge that deterioration to features not currently visible will likely be discovered during the course of the rehabilitation work and will require additional repairs. Owner agrees to notify Historic New England in writing and seek its approval of the methods and materials for additional repairs before undertaking any work. Historic New England shall have up to fourteen (14) days from the date of receiving notification, together with a full description of the deterioration and proposed repair work, to review proposals for additional repair work and respond to Owner.

No specific timetable is incorporated herein, it being understood between the Owner and Historic New England that the rehabilitation work outlined above shall be completed by December 31, 2018. Historic New England reserves the right to revoke this agreement if Owner does not complete the rehabilitation work set forth herein by the date set forth above. In the event Owner sells or title to the Premises otherwise transfers to a third party before the work is completed, the terms of this Agreement will not transfer.

Owner shall assume all costs associated with this Rehabilitation Plan, and shall indemnify and hold Historic New England harmless for any liability, costs, attorney's

fees, or judgments of expenses to Historic New England or any officer, employee, agent, or independent contractor of Historic New England resulting from actions or claims of any nature arising out of the exercise of rights under this Agreement, excepting any such matter arising solely from the gross negligence or willful misconduct of Historic New England.

Historic New England reserves the right to inspect all work undertaken while in progress and upon completion of this Agreement. Owner agrees to grant Historic New England access to all areas of the Premises as outlined under the Inspection provision (paragraph 11) in the above referenced PRA. Such inspections shall be made at reasonable hours and only after prior notice to Owner. Owner agrees to provide Historic New England with a record of all products and materials used in the execution of this Agreement for documentation purposes. Historic New England reserves the right to seek redress at law and in equity, including, without limitation, specific performance, in the event that the work described herein is not being conducted in accordance with the terms of this Agreement. In the event of a dispute between the parties, both parties to this Agreement shall have the right to pursue all remedies available to them as outlined under the Enforcement provision (paragraph 14) contained in the above referenced PRA. Nothing contained herein shall be interpreted to authorize or permit the Owner to violate any building code, ordinance or regulation relating to building materials, construction methods or use. In the event of any conflict between any building code, ordinance or regulation and the terms hereof, Owner shall promptly notify Historic New England in writing of such conflict and shall cooperate with Historic New England and the appropriate authorities to accommodate the purposes of both this Agreement and such ordinance or regulation. This Agreement shall be subject to said PRA and nothing in this Agreement shall be deemed to modify any provision of the above-referenced PRA.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

WITNESS

SOCIETY FOR THE PRESERVATION  
OF NEW ENGLAND ANTIQUITIES  
D.B.A. HISTORIC NEW ENGLAND

\_\_\_\_\_

\_\_\_\_\_  
Carl R. Nold, President and CEO

COMMONWEALTH OF MASSACHUSETTS

County of Suffolk, ss

On this \_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned notary public, personally appeared Carl R. Nold, President and CEO, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as President and CEO of Historic New England, a corporation.

\_\_\_\_\_  
Notary Public

My commission expires:

WITNESS

OWNER

\_\_\_\_\_

\_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

County of Middlesex, ss

On this \_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she/he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public

My commission expires:

## **EXHIBIT A**

### **DESCRIPTIONS OF PREMISES**

The land with the buildings and improvements thereon, situated in Wilmington, Middlesex County, Massachusetts being identified as Lot 6 as shown on a plan entitled "165 Chestnut Street, Wilmington, Massachusetts, Plan of Land of Velma M. Emery," prepared by GCG Associates, Inc., dated May 24, 2005 and recorded with the Registry in Plan Book 219 as Plan No. 20.

## EXHIBIT B

### Rehabilitation Methodology and Treatment

**Roof Replacement:** Following the removal of the existing roof shingles, the sheathing boards should be inspected for soundness. Deteriorated boards should be replaced with new boards that match the species, dimensions and fastening techniques of the existing boards. The installation of plywood is not permitted. Black or dark gray asphalt or fiberglass shingles that are warranted for a minimum of twenty-five (25) years are to be installed. Shingles should be spaced 1/4" apart, with sidelaps of at least 1-1/2". One row of wood shingles should form the roof's drip edge. The shingles should be installed over 15# roofing paper and attached using hot-dipped galvanized nails per shingle, *hand-nailed* to ensure good attachment to underlying roof sheathing boards. Historic New England also recommends installing 3' of ice/water shield membrane at the eaves to prevent water intrusion from ice dams.

As an alternative, wood shingles may be installed. 3/4" strapping or Cedar Breather should be installed directly on top of the sheathing. The strapping should not be continuous (thus allowing air to circulate). Alaskan Yellow Cedar shingles are recommended for re-roofing as they are highly insect and rot resistant.

During the course of the re-roofing, replacement of all flashings and counterflashings with new copper or lead-coated copper flashing must be undertaken. Historic New England does not approve installing a ridge vent or soffit vents at the roof.

**Rebuilding Main Block's Chimney:** Rebuilding of the Main Block's chimney from the attic floor through the roof is permitted provided that intact brick be salvaged and re-used, new brick matches the size and color of the existing brick, a soft, lime mortar be used that matches the color, texture and tooling of the existing mortar, and that Historic New England confirms the rebuilt chimney will match the brick pattern, coursing, dimensions and design of the existing chimney prior to the commencement of any work.

**Interior Painting:** Chemical paint strippers may be used to remove paint layers from woodwork; however, heat guns/plates, sanding, grit blasting or other abrasive methods shall not be used.

**Structural Members and Framing Repairs:** The full scope of necessary repair work is unknown until the building's frame can be fully evaluated by a structural engineer. In general, deteriorated sections of wood framing members should be removed and new sections of wood that match the species, dimensions and joining techniques of the existing framing members spliced in. Historic New England will consider approving alternative repair methods and materials, including the use of steel following its review of the structural engineer's report and recommendations.